

DECISION



Crowley
PLB 1455
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

[Protests Against Exclusion from Competitive Range]

FILE: B-195990

DATE: August 19, 1980

MATTER OF: Macro Systems, Inc.; Richard Katon & Associates, Inc.

DIGEST:

1. Contracting agency may reasonably consider proposed management as indication of offeror's understanding of scope of work required.
2. GAO will not reevaluate technical proposals, but rather will examine record to determine whether judgment of contracting agency was clearly without reasonable basis. Disagreement by protester does not in itself establish that evaluation clearly has no reasonable basis.
3. GAO will closely scrutinize technical evaluations which leave only one offeror within competitive range.
4. While any of several flaws in proposal may be considered minor weakness, accumulation may justify conclusion that proposal is so materially deficient that it cannot be made acceptable except by major revisions and additions.
5. There is no basis for favoring incumbent or previous contractor in competitive range determination, and either may properly be eliminated for failure to translate capabilities into initial proposal.
6. When solicitation states that cost will be determining factor only if quality among offerors is considered equal, protesters who were ranked 23 and 24 points below successful offeror may properly be excluded from competitive range. In any case, contracting agency may eliminate technically unacceptable proposal without considering cost.

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7. Refusal to conduct negotiations with technically unacceptable offeror does not constitute de facto debarment, which is defined as exclusion from Government contracting for reasonable, specified period of time.

Macro Systems, Inc. (Macro) and Richard Katon & Associates, Inc. (RKA) protest their exclusion from the competitive range under request for proposals (RFP) No. 271-79-2603, issued by the National Institute on Drug Abuse (NIDA), Department of Health, Education and Welfare (now the Department of Health and Human Services). NIDA plans to award a cost-reimbursement, level-of-effort contract for clinical technical assistance to Federally-funded state and local drug treatment programs.

NIDA received proposals from Macro, RKA, and Birch & Davis Associates, Inc. (Birch & Davis). The proposal submitted by Birch & Davis was the only one determined capable of being made acceptable, and NIDA held discussions with that firm. Award has not yet been made, since the parties agreed, as a condition of dismissal of a complaint filed by Macro in the U.S. District Court for the District of Columbia (Civil Action No. 79-2782), to be bound by our decision on Macro's protest.

Both protesters allege errors in the evaluation process, contending that their exclusion from the competitive range was unreasonable. Both cite performance of similar NIDA contracts as evidence of their capability; RKA is the incumbent, while Macro held the contract for three previous years. The protesters also charge that the evaluation panel was biased, and suggest that it was not selected in accord with NIDA policy. Finally, RKA alleges that its exclusion is part of a pattern of de facto debarment by NIDA.

For the reasons stated below, we are denying the protests.

PROGRAM OBJECTIVES

The contractor is to assist Single State Agencies (SSAs) and community drug treatment programs to upgrade the quality of patient management, obtain third-party funding, and improve clinical operations. The objectives of the project, as stated in the RFP, were to improve the quality of clinical operations in such areas as medical services delivery, health records analyses, and counseling and psychotherapeutic techniques, as well as to improve the efficiency of program management in areas including clinical standards, confidentiality, third-party payments, use of community and academic resources, and outreach capability. Offerors were to assume, for cost estimating purposes, that 60 percent of the tasks to be performed under the contract would be aimed at improving program quality, and 40 percent at improving efficiency.

Proposals were to be evaluated as follows:

<u>CRITERIA</u>	<u>NUMERICAL WEIGHT</u>	
"1. <u>Feasibility of Technical Plan and Approach Proposed</u>	<u>Subtotal</u>	<u>Total</u> 30
(a) Soundness of methodology and procedures to be used in the implementation of each project objective. (Consideration will be given to innovative techniques.)		
"2. <u>Demonstration of Understanding of the Problems/Objectives of this Project</u>		30
(a) Demonstrated understanding of the needs at the program level which are likely to be encountered within each project objective.	10	
(b) Demonstrated understanding of State oversight with respect to project objectives.	10	

	<u>Subtotal</u>	<u>Total</u>
(c) Demonstrated knowledge of procedures to meet the needs/problems identified in 'a' and 'b' above.	10	
"3. <u>Proper Management and Utilization of Personnel and Resources Assigned to the Project</u>		<u>20</u>
(a) Demonstrated ability to manage the delivery of clinical technical assistance or similar, related projects.		
1. Phase-in and phase-out of tasks	5	
2. Scheduling of tasks	5	
3. Quality control assurance	5	
4. Supervisory procedure and utilization of key personnel (include level-of-effort, availability)	5	
"4. <u>Expertise/Capability of Key Personnel to Implement and Complete Proposed Project</u>		<u>20</u>
(a) Expertise/Capability in clinical care (emphasis will be placed on application of expertise as it will be utilized in this project)."		

The paramount consideration, according to the solicitation, was technical quality; cost would become a deciding factor only if two or more proposals were technically equal.

ALLEGED EVALUATION ERRORS

Failure to Follow Listed Criteria

Both protesters allege that the evaluation committee departed from the listed evaluation criteria and scored the proposals on the basis of extraneous beliefs and biases. RKA contends that each section of its proposal should have

been scored separately, but was not, since, for example, it was downgraded under the program understanding criterion for weaknesses in management. NIDA states that the evaluation committee properly reviewed all information contained in the proposals in light of each criterion, regardless of the chapter headings used by offerors.

Macro argues that the evaluation committee was interested in a complete overhaul of NIDA procedures, and therefore digressed from the RFP. To support this charge, it cites similarities between this and previous statements of work. NIDA acknowledges that the workscope of this project has not changed in the past four years, but points out that the evaluation criteria have been revised in the current solicitation.

We fail to find any evidence that the evaluation committee did not evaluate the proposals according to the criteria stated in the RFP. Rather, all three proposals appear to have been analyzed in terms of each listed criterion and sub-criterion, with strengths as well as weaknesses specifically identified. Moreover, we find it reasonable to consider proposed management, like costs, as an indication of an offeror's understanding of the scope of work required. See generally Electronic Communications, Inc., 55 Comp. Gen. 636 (1976), 76-1 CPD 15.

Elimination from the Competitive Range: Macro

Both protesters allege that their proposals were arbitrarily eliminated from the competitive range. NIDA, however, has numerous, specific criticisms. Evaluating Macro's technical plan and approach, NIDA found that a major weakness was the role proposed for SSAs, which coordinate local drug treatment efforts. NIDA states that Macro did not view the SSA as a partner in the planning or providing of technical assistance, but simply relegated it to the status of on-looker. According to the evaluators, the SSA should have been "the pivotal entry point" for each technical assistance effort. This flaw also demonstrated Macro's lack of understanding of the role of the SSAs, NIDA states.

Macro was downgraded for its failure to "adequately demonstrate procedures and implementation of technical assistance delivery." According to the evaluators, Macro's

proposed innovative procedures, which were purportedly cost saving, were "unacceptable, inappropriate, and duplicative," and proposed materials and concepts were "dated," so that their use would detract from initial efforts in the field. The evaluation committee found other deficiencies in Macro's proposal, including little understanding of drug treatment program counselor/client (drug addict) dynamics; no discussion of the basic problem of lack of funds to hire appropriately-trained and experienced staff; little sensitivity to specific populations such as women and the elderly, and no discussion of the handling of chronic or recurring technical assistance requests.

Macro's proposed management plan was criticized for its failure to provide a clear picture of personnel use. The evaluation committee concluded that overall, Macro had failed to translate the skills of its staff, consultants, and corporation into a sound or sensitive approach to SSAs and programs.

GAO Analysis of Macro's Allegations

It is not the function of this Office to reevaluate technical proposals. Audio Technical Services, Ltd., B-192155, April 2, 1979, 79-1 CPD 223; A.T. Kearney, Inc., B-196499, April 23, 1980, 80-1 CPD 289. We will examine the record of each procurement to determine whether the judgment of the contracting agency was clearly without a reasonable basis. Wisner and Becker Contracting Engineers and Synthetic Fuel Corporation of America, A Joint Venture, B-191756, March 6, 1979, 79-1 CPD 148; Joseph Legat Architects, B-187160, December 13, 1977, 77-2 CPD 458. Furthermore, the fact that a protester disagrees with an agency's evaluation does not in itself establish that the evaluation clearly had no reasonable basis. INTASA, B-191877, November 15, 1978, 78-2 CPD 347. However, determinations such as this one, which leave only one offeror within the competitive range, are closely scrutinized by this Office. Comten-Comress, B-183379, June 30, 1975, 75-1 CPD 400.

In this case, we can only conclude that NIDA's determination meets the reasonable basis test. Reviewing Macro's proposal, we find that the firm failed to provide specific details and to address each paragraph of the statement of work as required by the solicitation. It did not specify

procedures it would use to improve the quality of drug program operations; its approach was extremely general, exhibiting no strategy for adaptation to different problems that would be encountered in the field. By contrast, Birch & Davis' proposal outlined each step of its plan for the delivery of technical assistance and specified alternatives.

We note that Macro's proposal devoted a section to "Utilization of Key Project Staff in conducting Task Order Assignments." However, that section specifically outlined the use of only two of Macro's staff members. Other managers were referred to by position, without identification of who occupied those positions.

Birch & Davis' proposal, on the other hand, included a full discussion of staff functions and a chart which gave a clear overview of the organization. Thus, even strictly scrutinized, the selection of Birch & Davis for further discussions appears reasonable.

Exclusion from Competitive Range: RKA

With regard to RKA, the evaluation committee found that its proposal contained several informational deficiencies; mentioned techniques which had been tested and found ineffective; "parroted" the RFP; failed to establish a relationship between the work plan and the SSA, and aimed procedures for the delivery of technical assistance at control and maintenance, rather than at technical assistance. In addition, the evaluation committee felt that RKA had failed to adequately discuss its proposed internal quality controls.

In its project management plan, RKA stated "it is not realistic to attempt to prioritize inputs to the scheduling process." The evaluation committee felt that this "failure to incorporate priority settings" was a weakness and that RKA's suggestion that local drug programs go directly to the contractor for technical assistance ignored the RFP requirement that NIDA approve all technical assistance requests. RKA also was downgraded for failure to include procedures for selecting staff to serve on specific teams.

GAO Analysis of RKA's Allegations

Any of the above-mentioned flaws in a proposal is possibly a minor weakness, but we believe their accumulation justifies NIDA's conclusion that RKA's proposal was so materially deficient that it could not be made acceptable except by major revisions and additions. We have previously held that a proposal may be excluded from the competitive range for informational deficiencies which are so material that an entirely new proposal would be required. See PRC Computer Center, Inc., et al., 55 Comp. Gen. 60 (1975), 75-2 CPD 35; Comten-Comress, supra.

We note that RKA did not identify any internal evaluator or discuss how quality controls would be used to improve the delivery of technical assistance. This leaves the question of just how effective RKA's quality controls would have been.

We also note that RKA referred to "designated team leaders." It did not state how team leaders would be selected, but merely indicated that staff members would be chosen according to their area of expertise. Below the manager level, the organization chart simply listed field teams comprised of staff specialists and expert consultants. We cannot conclude that such general statements meet the requirement that "appropriate flow-charts and documentation shall be provided in sufficient detail to clearly describe the types of personnel to be employed, their responsibilities, and how these persons will be utilized and managed."

Consequently, we conclude that NIDA acted reasonably in excluding RKA from the competitive range.

INCUMBENCY/EXPERIENCE

Both Macro and RKA allege that Birch & Davis could not demonstrate its ability to manage and deliver technical assistance, as required by the RFP, since it had never been an NIDA clinical technical assistance contractor and had never conducted a nationwide technical support effort. Each of the protesters, as noted above, had previous experience with this particular project, but NIDA argues that this had no bearing on the current procurement, since evaluations were

based on the individual merits of the proposals submitted. The agency states that the past experience of both protesters was evaluated only as a means of demonstrating their proposed procedures and current understanding of the project goals.

We believe that, as the solicitation indicated, the requisite ability to carry out this project could have been demonstrated by performance in similar projects, not necessarily in clinical technical assistance to NIDA. The evaluation committee found that Birch & Davis had managed technical assistance projects before, and that although they were not on the scale of this project, key personnel proposed for this project did have such experience.

Moreover, there is no basis for favoring incumbents or previous contractors in competitive range determinations. We have held it is proper to eliminate an incumbent from the competitive range for failure to translate whatever capabilities which may have accrued from its incumbency into an initial proposal. See PRC Computer Center, supra; Potomac Research Incorporated, B-182823, April 29, 1975, 75-1 CPD 265.

OTHER ISSUES

Macro contends that it was per se unreasonable for NIDA to have excluded it from the competitive range since its initial proposal costs were the lowest of all three offerors. The solicitation stated that the paramount consideration was technical quality; cost would become a deciding factor only if quality among offerors was considered the same. RKA and Macro were ranked 23 and 24 points below Birch & Davis, so cost was not a determining factor here.


In addition, an agency may properly exclude a technically unacceptable proposal from the competitive range after an initial evaluation, without considering cost. Marketing Information Service, B-194703.2, December 20, 1979, 79-2 CPD 428; Dynallectron Corporation, B-185027, September 22, 1976, 76-2 CPD 267. Since the evaluation panel found Macro's proposal technically unacceptable, the fact that it was the lowest-priced offeror is irrelevant.

RKA alleges that the evaluation committee was biased, and may have been composed of members representing NIDA's awarding division, contrary to agency policy. NIDA, however, states that a newly-established Contracts Review Unit, operating independently of the program office, was responsible for evaluations. RKA's statements are speculative, and it has presented no specific evidence of bias. We therefore find RKA has not met its burden of proof on this point.

Both protesters also allege that the evaluation committee favored Birch & Davis because of its status as a socially and economically disadvantaged firm under section 8(a) of the Small Business Act (15 U.S.C. § 637(a), as amended by Pub. L. 95-507, October 24, 1978, 92 Stat. 1757). The evaluation panel was not apprised of Birch & Davis' 8(a) status; this information appeared only in the business proposal, which the evaluation panel never saw. Furthermore, this procurement was not set aside under section 8(a), so Birch & Davis' status could not have been considered even if the committee had been aware of it.

Finally, RKA argues that NIDA's refusal to permit it to respond to the evaluation committee's criticisms or to clarify its proposal constitutes de facto debarment. Debarment is an exclusion from Government contracting and subcontracting for a reasonable, specified period of time, following notice and a hearing. Federal Procurement Regulations § 1-1.601-1 (1964 ed.). In this case, NIDA has not excluded RKA from contracting with it or any other Government agency except in the context of this particular procurement, where RKA was determined to be technically unacceptable. Such action does not constitute either de jure or de facto debarment.

The protest is denied.



For The Comptroller General
of the United States